IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/06/2003

CORAM

THE HONOURABLE MR.JUSTICE M. KARPAGAVINAYAGAM
and
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

Crl.Appeal No.1125 of 2000

Ranganathan ... Appellant

-Vs-

State
Rep. by Inspector of Police
Sankar Nagar Police Station
Kancheepuram District. ... Respondent

Appeal against the judgment of conviction under Sec. 302
I.P.C. and sentence of Life Imprisonment made on 31-08-2000 in S.C.No. 372
of 1 998 on the file of the learned Principal Sessions Judge, Chengalpattu.

!For appellant : Mr.R.Rajasekaran

^For respondent : Mr.E.Raja,
Addl.Public Prosecutor

:J U D G M E N T

(Judgment of the Court was delivered by
M.KARPAGAVINAYAGAM, J)

Ranganathan, the appellant herein was convicted for the
offence under Section 302 I.P.C. and sentenced to undergo imprisonment for
life for having caused the death of one Lakshmi. Challenging the same, this
Appeal has been filed.

2. The short facts leading to the conviction are
summarized as follows:
"(a) The deceased Lakshmi was the wife of one Kaniappan.
Through Kaniappan, deceased Lakshmi gave birth to two children, namely P.W.1
Jamuna and P.W.2 Sakthivel. The said Kaniappan left the deceased and went
away and married some other lady. The deceased then had developed intimacy
with the accused. Though the accused and the deceased had been living as
husband and wife for 17 years, no children were born to them. In the
meantime, P.W.1 got married and she was living with her husband in a house
situated 2 km away from the residence of the accused. P.W.2 Sakthivel was

under the care of his uncle in his early age and only for about four years prior to the occurrence, he came under the care of his mother and the accused. P.W.4 Bose, P.W.5 Anbalagan, P.W.6 Muthu and P.W.7 Muthumari were residing in the same street, in which the accused and the deceased resided, at Thiruneermalai. In course of time, the accused developed illicit intimacy with P.W.7 Muthumari, a boot legger. This was questioned by the deceased. Due to the same, there were frequent quarrels between them.

(b) On 13-04-1997, the accused went to the house of P.W.7 and stayed there. Getting angry over this, the deceased went to the house of P.W.7 at 8.30 p.m. and scolded the accused and brought him back to her house. There was a continuous wordy quarrel between the accused and the deceased. The accused out of anger took out an Uruttukattai found nearby and beat with the same on the eyebrow of the deceased. The deceased fell down. Then, he took a kerosene tin and poured the kerosene over her body and set fire to her. The deceased got engulfed with the fire, cried aloud and came out of the house. In the meantime, the accused ran away from the scene.

(c) The neighbours rushed to the scene, put off the fire and took the victim to the Tambaram Government Hospital. P.W.9 Dr. Manivannan saw the deceased Lakshmi with burn injuries. He gave treatment on 13 -11-1997 at about 9.40 p.m. He found 50% burn injuries. He was informed that the deceased sustained burn injuries at her residence at 8.45 p.m. due to stove burst. P.W.9, Doctor after giving first aid, forwarded her for further treatment to Kilpauk Medical Hospital. Ex.P.3 is the Accident Register. In the meantime, P.W.1 Jamuna, the daughter of the deceased came to the Tambaram Government Hospital and accompanied the deceased to the Kilpauk Medical Hospital.

(d) P.W.11 Dr. Anandasamy attached to Kilpauk Medical Hospital admitted her in the hospital at about 10.10 p.m. Then, he arranged to send the message to the Police Station. On receipt of the message, P.W.16 Muniyandi, the Sub-Inspector of Police went to the hospital and recorded the statement from the deceased at about 2.30 p.m. on 14-11-1997. Ex. P.12 is the complaint. He sent a requisition Ex.P.13 to the XXI Metropolitan Magistrate to record dying declaration of the deceased. Then at 4.00 p.m., he came to the Police Station and prepared the First Information Report Ex.P.14, after registering the case under Section 307 I.P.C.

(d) In the meantime, on receipt of the requisition Ex.P.13, P.W.15 XXI Metropolitan Magistrate came to the hospital and enquired the deceased in the presence of P.W.11 doctor. After verification that she was conscious, he began recording dying declaration at 2.45 p.m. At that time, P.W.11 Dr. Anandhasamy issued Certificate Ex.P.5, which has been appended to Ex.P.11 to the effect that the deceased was in a fit state of mind to give dying declaration. Ex.P.11 is the dying declaration. P.W.16 thereupon went to the scene of occurrence, he drew rough sketch Ex.P.15 and prepared observation mahazar Ex.P.1. He arranged to take photos M.Os. 3 and 4 series in the scene of occurrence. He recovered M.O.1 kerosene tin under a cover of mahazar Ex.P.2. He examined the other witnesses.

(e) P.W.17 Inspector of Police on receipt of the F.I.R. which was registered under Section 307 I.P.C. took up investigation on 15-11-199 4. He continued investigation by examining other witnesses. P.W.10 Dr. Thanikachalam, who was working at Kilpauk Medical Hospital declared the injured Lakshmi dead on 21-11-1997 at about 3.00 a.m. He sent the death

intimation to the Police. Then, P.W. 17 on receipt of the message altered the case for the offence under Section 302 I.P.C. and sent the Express F.I.R. Ex.P.16 to the Court and other superiors. Between 9.00 a.m. and 10.45 a.m. on 21-11-1997, P.W.17 Inspector of Police conducted inquest over the dead body of the deceased in the presence of panchayatdars. Inquest Report is Ex.P.17. Then, he sent the body of the deceased with the requisition Ex.P.6 to conduct post mortem.

(f) P.W.12 Dr. Govardhanan on 21-11-1997 at 2.00 p.m., commenced the post-mortem and noticed that the deceased sustained infected burn injuries, abrasion and contusion and he opined in Ex.P.7 post mortem certificate that the deceased would appear to have died due to complications of burns resulting in septicemia.

(g) P.W.17 Inspector of Police arranged to send the articles for chemical examination. On 25-11-1997 at about 1.00 p.m., he arrested the accused in Thiruneermalai Road and in pursuance of his confession Ex.P.20, M.O.2 Uruttukattai which was the weapon used by him for the commission of the offence was recovered. Thereafter, he was sent for remand. After completion of the investigation, P.W.17 Inspector of Police filed the chargesheet against the accused for the offence under Section 302 I.P.C.

(h) During the course of trial, on the side of prosecution, P.W.s 1 to 14 were examined, Exs.P.1 to P.21 were filed and M.Os. 1 to 5 were marked.

(i) When the accused was questioned under Section 313 Cr.P.C. with reference to the materials available on record, he stated that he was not present at the scene at the time of occurrence and he was in the night duty on that day and after finishing his night duty, he came home only in the morning and on coming to know that his wife Lakshmi sustained injuries due to stove burst and was admitted in the hospital, he went to the hospital and he was with the deceased from 12.00 noon, till 9.00 p.m. and thereafter, he went again to the hospital after 2 or 3 days later and only thereafter, he was arrested by the police in a case falsely foisted against him. However, he did not choose to examine any defence witness.

(j) Having regard to the evidence available on record and on appreciation of the same, the trial Court found the accused guilty of the offence under Section 302 I.P.C. and sentenced him to undergo life imprisonment. The above judgment of conviction and sentence is under challenge before this Court.

3. Mr.Rajasekar, the learned counsel appearing for the appellant would exhaustively take us through the entire records and would strenuously contend that the materials available on record are not sufficient to hold that the accused is guilty of the crime and moreover, there are several infirmities in those materials and as such, the accused is entitled to be acquitted.

4. The learned counsel for the appellant would vehemently argue that Ex.P.12 would not have come into existence at the relevant time, since it was registered only at 4.00 p.m. on 14-11-1997, even though the

crime number has been mentioned in Ex.P.13 requisition to the Magistrate to record dying declaration which was sent even prior to 2.00 p.m. on the same day. He also pointed out that in Ex.P.12, though P. W.11 Doctor has signed for certifying that the deceased was conscious, he has not chosen to refer to the same and as such, Ex.P.12 cannot be relied upon, especially when the said document which was said to have been registered at 4.00 p.m. on 14-11-1997, reached the Magistrate on 18-11-1997, nearly after 4 days. It is also pointed out that the statement of the deceased as contained in Exs. P.3 and P.19 which was prepared by the Doctors on 13-11-1997 night gives a different picture relating to the manner of the occurrence. On the otherhand, Exs. P.11 and 12 would give the details to the effect that the deceased sustained injuries due to the act of the accused pouring kerosene and setting fire to her. When two sets of stories have been projected by the prosecution through these documents, no reliance can be placed on the statement Ex.P.11 given by the deceased to the Magistrate. Furthermore, P.W.15 did not observe the required formalities while recording the dying declaration by putting relevant questions to the deceased. In view of these infirmities, it has to be held that the prosecution case would bristle with several infirmities and consequently, the accused has to be given the benefit of doubt.
5. On these aspects, we have heard the learned Additional Public Prosecutor.

6. We have carefully considered the rival contentions urged by the learned counsel for both parties and gone through the entire records.

7. The prosecution would rely upon two dying declarations. The first dying declaration is Ex.P.12, which was recorded by P.W.16 SubInspector of Police in the morning of 14-11-1997. This was attested by P.W.11 Dr.Ananthasamy. The next document is Ex.P.11, another dying declaration recorded by P.W.15, the XXI Metropolitan Magistrate at about 2.45 p.m. on 14-11-1997. Though the prosecution has examined P.Ws. 1 to 6 to speak about the occurrence and also to speak about the oral dying declaration given by the deceased to them, those witnesses turned hostile.

8. According to the prosecution, the accused had developed illicit intimacy with P.W.7 Muthumari and the same was objected to by the deceased. Despite the said objection, the accused on 13-04-1997 went to the house of P.W.7 Muthumari and stayed with her. Aggrieved by the same, the deceased went to the house of P.W.7 and scolded the accused and brought him back to her house. Due to this, there was a quarrel between them, which resulted in the crime in question.

9. The prosecution has examined P.W.7 Muthumari to speak about the motive for the occurrence. Unfortunately, P.W.7 also turned hostile. Consequently, we are constrained to hold that there are no direct evidence with reference to the incident in which the deceased sustained injuries. But, the fact remains that all the witnesses, namely P. Ws. 1 to 6 would uniformly depose that both the deceased and the accused were living together for about 14 years as husband and wife under the same roof. This fact has not been challenged. Furthermore, the accused himself would admit in the questioning under Section 313 Cr.P.C. that he was living with her for

about 14 years in the same house, where the occurrence had taken place.

10. So, this Court is only to consider the other available evidence in order to find out whether the accused is the perpetrator of the crime. As indicated above, we have got two dying declarations i.e., Exs. P.11 and P.12 recorded by the XXI Metropolitan Magistrate and the S.I. of Police respectively. Before dealing with these dying declarations, it is to be noticed that Exs. P.3 and P.19, namely, accident registers relating to the admission of the deceased in Tambaram General Hospital and Kilpauk Medical Hospital respectively, would give the contents of the statement made by the deceased to the respective doctors.

11. Ex.P.3 has been referred to by P.W.9 Doctor. In Ex.P.3, it is stated that " alleged to have accidentally involved in a pump stove burst at 8.45 p.m. at her house on 13-11-1997." While referring to this document, P.W.9 would state that this statement relating to the stove burst was made by one Vijayakumar, who accompanied the deceased. However, he has admitted in the cross-examination that when the deceased was admitted in the hospital, she was conscious and he told the police that such a statement was given by the deceased to him. Similarly, in Ex.P.19, the accident register which has been issued by Kilpauk Medical Hospital at about 10.45 p.m. on 13-11-1997, it has been stated "Patient conscious, pulse 80/mt. Patient says accidently fire caught her saree from stove at 8.30 p.m. of above address." But, author of this document has not been examined to prove this document. This document has been marked through P.W.17, the Investigating Officer.

12. However, it is noticed on a perusal of these documents that the deceased earlier stated to the Doctor that it was an accidental fire, but it is to be pointed out that in Ex.P.3, which was prepared at 9.40 p.m., the deceased stated that accident was due to the stove burst and as per Ex.P.19, the deceased told on 13-11-1997 that accidentally fire caught her saree from stove at 8.30 p.m. The details of the facts with regard to the manner of occurrence as noted in Exs. P.3 and P.19 are not consistent. Furthermore, the observation mahazar Ex.P.1, rough sketch Ex.P.15 and M.O.3 series photos would show that no stove was present in the scene of occurrence. Therefore, the theory that she got accidental fire through stove burst or saree falling on the burning stove has to be ruled out.

13. Thus, we are left with the documents Exs. P.11 and P.12, the dying declaration. According to the prosecution, Ex.P.12, the statement from the deceased was recorded by P.W.16 Sub-Inspector of Police, before recording Ex.P.11 dying declaration by the XXI Metropolitan Magistrate. Therefore, let us look into Ex. P.12 first.

14. On consideration of the materials relating to Ex.P.12, which is stated to be recorded by Sub-Inspector of Police in the early morning of 14-11-1997, we are to state that the evidence relating to Ex.P.12 is not so impressive. According to P.W.16, Sub-Inspector of Police, he went to the hospital and recorded the statement Ex.P.12 at 2.30 a.m. A perusal of Ex.P.12 would indicate that there is no reference about the crime number and only details are given as to who wrote that complaint. It is not mentioned in

Ex.P.12 that the same was registered for the offence under Section 307 I.P.C. On the otherhand, P.W.16, Sub-Inspector of Police would state that after recording the complaint Ex.P.12 from the deceased, he went to the Station at 4.00 p.m. and registered a case under Section 307 I.P.C by giving the Crime No. 1786 of 1997. P.W.16 Sub-Inspector of Police gave a requisition Ex.P.13 to the XXI Metropolitan Magistrate which contains the particulars of crime number, which had been given for this case. There is no explanation from P.W.16 as to how he was able to get the crime number and mention the same in Ex.P.13, even before the registration of the case. A perusal of Ex.P.13 would

clearly indicate that P.W.16, Sub-Inspector of Police sent a requisition to P.W.15, the XXI Metropolitan Magistrate mentioning the nature of the offence and the particulars of crime number.

15. Furthermore, it is seen from Ex .P.12 that the words "gof;f nfl;nld; rhp" were noted later. A reading of Ex.P.12 would reveal that the deceased stated in her statement Ex.P.12 that she had given one more statement to the Police in the early morning. It means that Ex.P.12 must have been recorded by P.W.16 subsequent to the receipt of earlier statement recorded from the deceased by the Police Officer. Furthermore, it is noticed that the statement, which was treated as a complaint (Ex.P.12) recorded by P.W.16 Sub-Inspector of Police reached the Court only on 18-11-1997, even though the same was registered for the offence under Section 307 I.P.C, a serious offence. There is no explanation as to why there was delay in despatching of the F.I.R. In view of the above suspicious feature, we are unable to place any reliance on Ex.P.12.

16. Now, we will come to Ex.P.11 dying declaration given to the XXI Metropolitan Magistrate. The occurrence had taken place inside the house of the accused at about 8.45 p.m. on 13-11-1997. On receipt of the requisition Ex.P.13, P.W.15, the XXI Metropolitan Magistrate visited the Kilpauk Medical Hospital and put questions in order to know whether the deceased was able to talk. He also obtained opinion from P.W.11 doctor as to her consciousness. After verification of the same, P.W.15 recorded the dying declaration after introducing himself to the deceased. Recording of dying declaration was commenced at 2.45 p.m. and the same was over at 3.00 p.m. The certificate Ex.P.5 has been appended to Ex.P.11 by P.W.11 Doctor certifying that the deceased was in a fit state of mind to give the dying declaration. A perusal of Ex.P.11 would show that the statement is so short and crisp.

17. According to the deceased as per Ex.P.11 statement, her first husband left her along with two children and thereafter, she was living with Ranganathan, the accused. One Muthumari, a bootlegger developed illicit intimacy with the accused on the date of occurrence, the accused went to Muthumari's house and stayed along with her in the same house. Next day morning, the deceased went to Muthumari's house and brought him back to her house . On getting angry over this, the accused beat the deceased with uruttukattai on her face and poured kerosene over her body and set fire to her.

18. This dying declaration shows that the accused Ranganathan was solely responsible for the act of causing burn injuries on his

wife. The details of the motive and the manner of occurrence have been clearly mentioned. As noted above, P.W.11 Doctor also would state in Ex.P.5 certificate that the deceased was conscious enough and in a fit state of mind to give dying declaration, when the dying declaration was recorded by the Judicial Magistrate P.W.15.

19. It is well settled law that if the dying declaration is held to be trustworthy, then the conviction can be based even without corroboration. In this case, we are unable to find any reason to hold that the dying declaration Ex.P.11 which was recorded by the Judicial Magistrate P.W.15 is unreliable, but the same is corroborated by the other materials as well. The deceased would state in the dying declaration that she went to P.W.7's house and brought the accused back to her home. On getting infuriated over this, the accused with uruttukattai attacked the deceased and caused injuries on the face of the deceased and thereafter, he poured kerosene from the kerosene tin and set fire to her. P.W.12, the postmortem doctor, who issued Ex.P.7, the postmortem certificate, was able to find that there were two injuries on the face. P.W.12 the Doctor would further state that these injuries would have been caused by uruttukattai, which was marked as M.O.2 .

20. It is also stated in the dying declaration that the occurrence had taken place in the house of the accused at No.40, Malimaa Street, Thiruneermalai Road. Ex.P.1 observation mahazar, Ex.P.2 recovery mahazar and Ex.P.15 rough sketch would show that the occurrence had taken

place inside the said house and from the house, the kerosene can was recovered. In fact, the aspect of the evidence in relation to the place of occurrence has not been disputed by the accused.

21. It is strenuously contended by the counsel, that the Judicial Magistrate P.W.15 did not record the statement of the deceased in a question-answer form. On a perusal of Ex.P.11, it is noticed that the details of the questions put to the deceased were not written. On this reason, Ex.P.11 cannot be rejected.

22. In the above context, it is to be noticed that the Supreme Court in 2003 Supreme Court Cases (Criminal) 561 (STATE OF KARNATAKA Vs. SHARIFF) would hold as follows:

"....Very often the deceased is merely asked as to how the incident took place and the statement is recorded in a narrative form. In fact such a statement is more natural and gives the version of the incident as it has been perceived by the victim."

23. The above decision has been relied upon by the Supreme Court in yet another decision in (1998) 4 SCC 517 (RAM BIHARI YADAV Vs. STATE OF BIHAR), wherein, it was held as follows:

" It cannot be said that unless the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person

though, unlike the principle of English law he need not be under apprehension of death, it should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and an swers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability."

24. In view of the above principles laid down on this aspect by the Supreme Court, we are not impressed with the argument that the recording was not proper. On the other hand, the evidence of P.W.15 Judicial Magistrate would clearly indicate that necessary questions had been put by him and answers have been elicited from the deceased. Though the details of the questions have not been recorded in Ex.P.11, we have no reason to reject the evidence of P.W.15, the XXI Metropolitan Magistrate with reference to the same. Therefore, we are of the view that Ex.P.11, the dying declaration recorded by P.W.15 in the presence of P.W.11 Doctor which has been proved through Ex.P.5 would show that the dying declaration inspires confidence of this Court and as such, full reliance can be placed upon the same.

25. It is also to be noticed that, there is no material to conclude that prior to recording of dying declaration, any witnesses who are inimical to the accused, were present in the hospital to tutor the deceased to falsely implicate the accused.

26. In this context, we may refer to one more aspect to show that Ex.P.11, the dying declaration is to be held reliable in the light of the explanation given by the accused, which cannot be said to be probable. The statement of the accused, when he was questioned under Section 313 Cr.P.C. is that he was working as a watchman in a quarry and on the date of occurrence, he went for night duty and when he came back home next day morning, he was told that Lakshmi, the deceased was taken to the hospital with burn injuries and thereafter, he went to the hospital and that he was with the deceased between 12.00 noon and 9.00 p.m. on the same day. Strangely, to this effect, no suggestion had been put to any other witnesses, including the police Officers. Further, no material has been placed on the side of the defence to establish the same. This explanation in our view is not only improbable, but also false, in view of the fact that according to P.W.15 the Judicial Magistrate, on receipt of Ex.P.13, he went to the hospital and recorded dying declaration between 2.45 p.m. and 3.00 p.m. According to the prosecution, the case was registered for the offence under Section 307 I.P.C. even prior to the recording of the dying declaration by P.W.15. If that being the case the statement of the accused, that he was with the deceased between 12.00 noon and 9.00 p.m. on that day cannot be true.

27. As a matter of fact, the evidence of P.W.17, the Inspector of Police, would show that he was arrested on 25-11-1997 and thereafter, on his confession, uruttukattai M.O. 2 was recovered. As noted above, no suggestion was put to P.W.17 that he was in the hospital on 1 4-11-1997 throughout and the police did not choose to arrest him. On these reasonings, we are to conclude that the explanation which has been belatedly

sought to be given by the accused when questioned under Section 313 Cr.P.C. has to be held false.

28. Resultantly, the Appeal is devoid of merits and the same is dismissed, confirming the conviction and sentence imposed upon him by the trial Court.

Index:Yes
Website:Yes

paa

To

1.The Principal Sessions Judge, Chengleput.
2.The Superintendent, Central Prison, Vellore.
3.The Superintendent, Central Prison, Madras.
4.The Public Prosecutor, High Court, Madras.
5.The Inspector of Police, Sankar Nagar Police Station
kancheepuram District.
6.The Collector, Chengleput.
7.The Director General of Police, Chennai-600 004.